

Protecting Sources

A federal shield law is within reach.

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THE DISTRICT and 49 states have laws or court decisions that protect the relationship between journalists and their sources. Attempts to extend such a shield to the federal level came up short in the most recent Congress. But prospects are brighter this year now that the House has approved by voice vote the Free Flow of Information Act of 2009.

The bill, sponsored by Rep. Rick Boucher (D-Va.) and Rep. Mike Pence (R-Ind.), is identical to one the chamber passed with an overwhelming, bipartisan majority last year. Federal courts would be able to compel a journalist to reveal a confidential source only under specified conditions, such as if disclosure is needed to prevent death, bodily harm or a terrorist act, or to identify a person who leaked properly classified information in such a way as to cause "significant and articulable" harm to national security. In all cases, the judge also would have to find that the party seeking to compel disclosure had exhausted all reasonable alternative sources of the information -- a requirement already found in the Justice Department's policies -- and that the public interest in disclosing the source outweighs the public's right to know. In addition, the definition of "covered person," or journalist, is narrowly tailored. The law would not apply to anyone who is affiliated with a terrorist organization or who has been designated a terrorist by the federal government.

The difficulty in moving the Free Flow of Information Act from bill to law has been getting it through the Senate. It passed with strong, bipartisan support out of the Senate Judiciary Committee in October 2007 and then stalled. Sens. Charles E. Schumer (D-N.Y.), Arlen Specter (R-Pa.), Richard G. Lugar (R-Ind.) and Lindsey O. Graham (R-S.C.) reintroduced the bill in February. Their measure is similar to the House version, so hammering out the differences shouldn't be too tough. And there's reason to hope that the Justice Department under Attorney General Eric H. Holder Jr. will not be an impediment to passage, as the department under the previous administration was. President Obama supported the bill when he was in the Senate.

During his confirmation hearings, Mr. Holder said, "It is my belief that a carefully crafted law to shield the press in the way that you have described is appropriate." He cited understandable concerns about not wanting a law that would hamper national security. But neither does the consortium of media companies, including The Washington Post Co., that has lobbied for the shield bill's passage.

A free nation depends on not only active and engaged media. It also depends on courageous people who come forward confidentially to share information with reporters that exposes corruption and abuses of power. The Free Flow of Information Act would protect that relationship on the federal level while also safeguarding national security.